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SACRAMENTO COURTS
DEPT. #54

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

FAIR POLITICAL PRACTICES
COMMISSION, a state agency,

Dept. 54

No. 02AS04544

Plaintiff,

v.

RULING ON SUBMITTED MATTER

SANTA ROSA COMMUNITY OF THE
SANTA ROSA RANCHERIA dba PALACE
BINGO AND PALACE INDIAN GAMING
CENTER, and DOES I-XX,

March 6, 2003

9:00 A.M.

Defendants.

Department 54

The Santa Rosa Rancheria Tachi Yokuat Tribe (Tachi Tribe or Tribe) is a federally recognized Indian Tribe organized under the Articles of Community Organization of the Santa Rosa Indian Community, Santa Rosa Rancheria, Kings County, California. The Tachi Tribe owns and operates the Palace Indian Gaming Center on tribal land. Since 1998, the Tachi Tribe has made a number of large contributions to the campaigns of candidates for political office and campaigns for ballot initiatives in California elections. The Tribe has made these political contributions without complying with the requirements of the Political Reform Act (PRA, Gov. Code § 81000 et seq.) for reporting such political contributions.

The Fair Political Practices Commission (FPPC) brings this action against the Tachi Tribe for civil penalties and injunctive relief to enforce the PRA requirements retroactively and prospectively. The Tribe has moved to quash service of the First Amended Complaint and

1 Summons by the FPPC on the ground that this court lacks jurisdiction over the Tribe pursuant to
2 the federal common law of tribal immunity from suit, as explicated most recently by the United
3 States Supreme Court in *Kiowa Tribe v. Manufacturing Techs., Inc.* (1998) 523 U.S. 751
4 (*Kiowa*) and *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe* (1991) 498 U.S.
5 505 (*Potawatomi*).

6 In opposing the Tribe's motion to quash, the FPPC contends that the Tachi Tribe is a
7 "person" subject to the reporting requirements of the PRA and that it is not immune from this
8 action to enforce those requirements under the federal common law. The FPPC indicates that the
9 State is authorized to regulate the electoral campaign contributions of Indian tribes in state
10 elections under federal case law which authorizes States to impose their laws on tribes within
11 their boundaries if the state laws are not preempted by federal law and if related federal and tribal
12 interests are outweighed by substantial state interests. (See, e.g., *Three Affiliated Tribes of Fort*
13 *Berthold Reservation v. Wold Engineering, P.C.* (1986) 476 U.S. 877 (*Three Affiliated Tribes*);
14 *Mescalero Apache Tribe v. Jones* (1973) 411 U.S. 145 (*Mescalero*)). According to the FPPC, no
15 federal law or related federal and tribal interests preempt imposition of the PRA reporting
16 requirements on the Tachi Tribe; rather such imposition of the PRA requirements is justified by
17 California's substantial interest in the integrity of its electoral processes. The FPPC maintains
18 that the State's sovereign power to control these electoral processes and sustain its representative
19 form of government pursuant to the Tenth Amendment and the Guarantee Clause of the United
20 States Constitution would be violated if the State were barred from imposing the PRA reporting
21 requirements on the Tribe.

22 The FPPC further contends that the common law doctrine of tribal immunity
23 insulates Indian tribes only from suits arising from their activities in governing themselves and
24 their members and in pursuing commercial enterprises within their own territory. The FPPC
25 argues that the doctrine of tribal immunity from suit set forth in *Kiowa* and *Potawatomi* does not
26 apply to the Tachi Tribe's political contributions in California elections that have effects on state
27 political processes well beyond tribal self-governance and commercial enterprises.

28

Moreover, in the FPPC's view, this action for civil penalties and injunctive relief is essential to the enforcement of PRA reporting requirements and the achievement of their purposes in ensuring the integrity of the state electoral processes and representative form of government. Thus, the FPPC concludes, the immunity of the Tachi Tribe from this action under federal common law would leave the State without a remedy to enforce the PRA reporting requirements and would violate its sovereign powers reserved under the United States Constitution.

As explained below, the court rejects the FPPC's contentions and finds that this action against the Tachi Tribe is barred by the common law doctrine of tribal immunity from suit.

BACKGROUND

In *Cherokee Nation v. Georgia* (1831) 30 U.S. 1 and *Worcester v. Georgia* (1832) 31 U.S. 515 (*Worcester*), the United States Supreme Court recognized that American Indian tribes possessed a unique form of sovereignty. In *Cherokee Nation*, Chief Justice Marshall described the tribes as "domestic dependent nations" whose sovereignty was subject to the complete dominion of the United States and distinct from that of foreign nations and each of the States composing the United States. (30 U.S. at 17-18.) In *Worcester*, Chief Justice Marshall traced the basis of this inherent tribal sovereignty to and through the historical relations and treaties between Indian tribes and Great Britain during colonial times and between the tribes and the United States subsequently. (31 U.S. at pp. 542-561.)

The Chief Justice explained that, pursuant to those historical relations and treaties, the tribes were regarded and established as separate and distinct political communities under the exclusive protection and dominion of the United States, possessing rights to territory and governance with which no State could interfere. (*Id.*, at pp. 556-559.) Consistent with this historical political arrangement, the United States Constitution vested exclusive power in the United States to regulate all intercourse with the tribes. (*Id.*, at p. 559.) This exclusive constitutional power superseded any state laws on the subject and contrasted with the power previously conferred on Congress by the Articles of Confederation where congressional control

1 of tribal affairs was subject to a proviso "that the legislative power of any state within its own
2 limits not be infringed or violated." (*Ibid.*)

3 Since *Worcester*, the common law of tribal sovereignty has evolved along with
4 political and socio-economic developments and with congressional policies reflecting those
5 developments. (See *Organized Village of Kake v. Egan* (1962) 369 U.S. 60, 71-75 (*Kake*).) In
6 particular, to facilitate the assimilation of Indian tribes into the general society of the nation,
7 Congress abolished the power to make treaties with the tribes and increasingly enacted statutes
8 authorizing the States to provide governmental services and exercise criminal and civil
9 jurisdiction within their boundaries over Indians and non-Indians on reservations. (*Id.*, p. 72.)
10 Concomitantly, federal case law departed from the original conception in *Worcester* of Indian
11 tribal sovereignty as a virtual bar to the jurisdiction of the States over tribal affairs and undertook
12 to determine whether governing federal statutes and treaties preempted state authority over tribal
13 affairs. (See *McClanahan v. Arizona State Tax Comm'n* (1973) 411 U.S. 164, 172
14 (*McClanahan*).) In the absence of governing federal statutes or treaties, federal case law
15 undertook to determine whether the state action at issue infringed on the right of reservation
16 Indians to make their own laws and be ruled by them. (*Id.*, at pp. 171-172; citing *Williams v. Lee*
17 (1959) 358 U.S. 217, 219-220.) And the case law held Indians outside reservations subject to
18 nondiscriminatory state laws otherwise applicable to all state citizens unless federal statutes
19 specifically exempted the Indians from the state laws. (*Mescalero*, 411 U.S. at p. 148, citing
20 *Kake*, 369 U.S. at p. 75.)

21 Thus, the evolution of federal case law since *Worcester* has resulted in the
22 application of state laws to the activities of Indians and Indian tribes unless their application is
23 found either to interfere with reservation self-government or to impair rights granted or reserved
24 by federal law. (*Kake*, 369 U.S. at p. 71. See also *California v. Cabazon Band of Mission*
25 *Indians* (1987) 480 U.S. 202, 214-215 (*Cabazon*), citing *New Mexico v. Mescalero Apache Tribe*
26 (1983) 462 U.S. 324, 331-332 (*New Mexico*).) This shift to a preemption analysis, however, has
27 not abandoned the doctrine of tribal sovereignty: the federal case law has continued to stress the
28 unique historical sovereignty of Indian tribes originally recognized in *Worcester* and, on that

1 basis, to insulate tribes from state and local control of their internal and social relations. (*New*
2 *Mexico*, 462 U.S. at pp. 332-333.) The case law has also relied on the concept of tribal
3 sovereignty and the underlying federal interests in tribal self-governance, economic development
4 and self-sufficiency as a backdrop to the analysis of whether state authority over tribal affairs is
5 preempted by federal law. (*Id.* at p. 335, citing *White Mountain Apache Tribe v. Bracker* (1980)
6 448 U.S. 136,143; and *McClanahan*, 411 U.S. at p. 172. See *Three Affiliated Tribes*, 476 U.S. at
7 p. 884.)

8 In another respect critical to the instant motion to quash, federal case law has
9 retained tribal sovereignty as a bar to state jurisdiction. That case law recognizes, as an inherent
10 attribute and necessary corollary of tribal sovereignty, the immunity of Indian tribes from suit by
11 state and local agencies and by private individuals and entities in state or federal courts. (*Kiowa*,
12 523 U.S. at p. 754, citing *Three Affiliated Tribes*, 476 U.S. at p. 890, *Santa Clara Pueblo v.*
13 *Martinez* (1978) 436 U.S. 49, 58 (*Santa Clara*); *United States v. United States Fidelity &*
14 *Guaranty Co.* (1940) 309 U.S. 506, 512 (*USF&G*). See also *Seminole Tribe of Florida v.*
15 *Florida* (1996) 517 U.S. 44, 54 (*Seminole*), quoting *Hans v. Louisiana* (1890) 134 U.S. 1, 13 ("It
16 is inherent in the nature of [each State's] sovereignty not to be amenable to the suit of an
17 individual without [the State's] consent"). Tribal immunity from suit, like all aspects of tribal
18 sovereignty, is subject to federal control and may be abrogated by federal authorization of suits
19 by public and private parties against Indian tribes. Absent such abrogation, however, the
20 immunity bars suits arising from tribal activities that are governmental or commercial in nature
21 and that occur within or outside of Indian country. (*Kiowa*, 523 U.S. at pp. 754-755, citing
22 *Puyallup Tribe, Inc. v. Department of Game of Wash.* (1977) 433 U.S. 165, 167 (*Puyallup*), and
23 *Potawatomi*, 498 U.S. 505.) Only an express waiver by a tribe of its immunity with respect to
24 specific activities will lift the bar. (*C & L Enter., Inc. v. Citizen Band Potawatomi Indian Tribe*
25 (2001) 532 U.S. 411, 418.)

26 Recent requests to narrow the expansive scope of tribal immunity have been wholly
27 rejected by the United States Supreme Court. In *Potawatomi*, the court refused to narrow the
28 immunity doctrine to permit a State's suit against a tribe for an assessment of state taxes that the

1 tribe was obligated under state law to collect on its retail cigarette sales to non-Indians. The
2 court rejected the State's contentions that tribal immunity impermissibly burdened the
3 administration of state tax laws and was outmoded in the context of modern tribal business
4 activities that were detached from traditional tribal interests in self-governance underlying the
5 tribal sovereignty doctrine. (498 U.S. at p. 510.) The court observed that it had recognized the
6 doctrine in past decisions and Congress had sparingly exercised its authority to abrogate or limit
7 the doctrine; instead, Congress had consistently approved the immunity doctrine in legislation
8 reflecting its desire to promote tribal self-government, self-sufficiency and economic
9 development. (*Ibid.*) "In these circumstances, [the court is] not disposed to modify the long-
10 established principle of tribal sovereign immunity." (*Ibid.*)

11 In thus sustaining tribal immunity, the court in *Potawatomi* distinguished the State's
12 regulatory authority to tax tribal retail sales to non-Indians from the remedies available to the
13 State to enforce its regulatory authority. (*Id.*, at p. 515.) The court reasoned that tribal immunity
14 barred the State from pursuing the most efficient remedy but not various alternative remedies.
15 (*Ibid.*) As the court subsequently commented in *Kiowa*: "There is a difference between the right
16 to demand compliance with state laws and the means available to enforce them." (523 U.S. at
17 p. 755.)

18 In *Kiowa*, the United States Supreme Court again sustained the doctrine of tribal
19 immunity from suit over a request to confine the doctrine to tribal transactions on reservations
20 and tribal governmental or political activities. In that case, a private business entity was barred
21 from suing an Indian tribe to enforce a promissory note that the tribe had arguably executed
22 outside its territory and on which the tribe had defaulted. The court sustained the immunity
23 doctrine in the broadest of terms, recognizing its application to tribal commercial and
24 governmental activities on and off Indian reservations. (*Id.*, at p. 754)

25 The court in *Kiowa* acknowledged that federal case law had assumed the existence of
26 tribal immunity without extensive reasoning and that retention of the immunity doctrine to
27 safeguard tribal self-governance may be outmoded or inapposite to wide-ranging tribal
28 enterprises extending well beyond traditional tribal activities. (*Id.*, at pp. 756-758.) Nonetheless,

1 the court declined to revisit its precedents, the backdrop against which Congress had acted over
2 the years to restrict or affirm sovereign immunity in various circumstances. (*Id.*, at pp. 758-759.)
3 The court instead chose to follow its course in *Potawatomi* and to defer to Congress, the
4 Legislative Branch that is "in a position to weigh and accommodate the competing policy
5 concerns and reliance interests" involved in any decision to maintain or modify the doctrine of
6 tribal immunity.¹ (*Id.*, at p. 759.) This disinclination by the court to itself weigh the competing
7 policy interests that favor or oppose tribal immunity from suit stands in marked contrast to the
8 inclination of the court to weigh competing federal, state and tribal interests when it undertakes
9 to determine whether particular federal laws preempt or permit state regulation of tribal
10 activities. (See, e.g., *Cabazon*, 480 U.S. 202; *Three Affiliated Tribes*, 476 U.S. at p. 884;
11 *Washington v. Confederated Tribes of Colville Indian Reservation* (1980) 447 U.S. 134
12 (*Colville*).)

13 ANALYSIS

14 Under the foregoing federal common law of tribal sovereignty, the Tachi Tribe is
15 presumptively immune from the instant suit by the FPPC to enforce PRA provisions for the
16 reporting of contributions to state electoral campaigns in accordance with specified formats and
17 timeframes.

18 As a federally recognized political entity, the Tachi Tribe is a sovereign distinct from
19 and beyond the jurisdiction of the State except to the extent permitted by federal law. Unlike
20 individual tribal members who are citizens of the State and thus may be subject to the State's
21 power over residents within its borders, the Tachi Tribe is not, and logically cannot be, a citizen
22 of the State. (See *Puyallup*, 433 U.S. at p. 173 (distinguishing Indian tribe from its individual
23

24 ¹ The *Kiowa* court compared the roles of the federal judiciary and Congress in recognizing and defining
25 tribal immunity from suit to the analogous roles of the judiciary and Congress in recognizing and defining the
26 sovereign immunity of foreign nations from suit. (523 U.S. at p. 759.) The court observed that the immunity of
27 foreign nations also began as a judicial doctrine enunciated in an 1812 opinion by Chief Justice John Marshall
28 which "came to be regarded as extending virtual absolute immunity to foreign sovereigns." (*Ibid.*) That absolute
immunity was limited with respect to the commercial and tortious acts of foreign nations, first by the State
Department in 1952, then more comprehensively by Congress in 1976. (*Ibid.*) The *Kiowa* court envisioned a
similar role for Congress in shaping the scope and contours of the broad judicial doctrine of tribal immunity from
suit. (*Ibid.*)

1 members).) In addition, because the Tachi Tribe is a distinct political entity subject to federal
2 rather than state definition and control, it is unclear whether the State can properly treat the Tribe
3 as a "person" within the meaning of Government Code section 82047 whose state electoral
4 campaign contributions are subject to the PRA reporting requirements. The Tribe is not merely
5 an individual, organization, association, other group of persons acting in concert, or a branch of
6 the state government that can be subjected by the State to the PRA requirements. (See Gov.
7 Code § 82047. See also *United States v. Wheeler* (1978) 435 U.S. 313, 323, quoting *United*
8 *States v. Mazurie* (1975) 419 U.S. 544, 557 ("Indian tribes are unique aggregations possessing
9 attributes of sovereignty over both their members and their territory. . . . [They] are a good deal
10 more than 'private, voluntary organizations'") Cf. *Fair Political Practices Commission v. Suitt*
11 (1979) 90 Cal.App.3d 125, 132-133 (sovereign interests of California Legislature did not
12 preclude its classification as "person" under PRA).)

13 Federal law does not expressly authorize California or other States to regulate state
14 electoral campaign contributions by federally recognized Indian tribes who, like the Tachi Tribe
15 here, make the contributions in their capacity as sovereign entities seeking to further their
16 political and economic interests.² Nor does federal law expressly authorize the States to
17 judicially enforce against the tribes state laws, like the PRA, that regulate campaign
18 contributions.³ And a particularized preemption analysis pursuant to federal case law may or
19 may not result in a decision authorizing state regulation of tribal contributions based on a
20 determination that the state interests in regulating tribal campaign contributions outweigh the
21 federal and tribal interests in avoiding regulation.⁴ (See, *Cabazon*, 480 U.S. at p. 214-215
22 (preemption analysis does not establish inflexible *per se* rule precluding state jurisdiction over
23

24 ² In contrast, Congress has regulated and prohibited contributions by foreign nationals to state and local
elections as well as federal elections. (See *United States v. Kanchanalak* (D.C.Cir. 1999) 192 Fed.3d 1037,
1047-1050; Gov. Code § 84320.)

25 ³ The Minnesota State cases cited by the FPPC may have determined implicitly that federal law permitted
26 application of the state political contribution disclosure laws to an Indian tribe in Minnesota, but those cases did not
27 consider or decide the issue of tribal immunity from suit under federal law. (See *Minnesota State Ethical Practices*
Bd. v. Red Lake DFL Comm. (Minn. Sup. 1981) 303 N.W.2d 54, 56; *Shakopee Mdewakanton Sioux (Dakota)*
Community v. Minnesota Campaign Finance and Public Disclosure Bd. (Minn. App. 1998) 586 NW.2d 406.)

28 ⁴ In this ruling disposing of the motion to quash, the court need not and does not decide whether the State is
authorized to impose PRA reporting requirements on the Tachi Tribe.

1 tribes and tribal members in absence of express congressional consent). Compare, e.g.,
2 *Puyallup*, 433 U.S. 165 (fishing by tribal members on and off reservation were subject to state
3 environmental laws) with *New Mexico*, 462 U.S. 324 (state hunting and fishing regulations could
4 not be enforced within Indian tribe's territory).) Were the preemption analysis to result in a
5 determination authorizing state regulation of tribal contributions, the determination would not
6 resolve the critical issue here: whether a state suit against a tribe to enforce state electoral
7 campaign regulations, even if validly imposed upon the tribe, would be barred by the federal
8 common law doctrine of tribal immunity. (See *Potawatomi*, 498 U.S. at p. 512-514, discussing
9 *Colville*, 447 U.S. 134 and *Moe v. Confederated Salish and Kootenai Tribes* (1976) 425 U.S. 463
10 (state laws applicable to tribal on-reservation commercial enterprises could not be enforced
11 judicially under federal tribal immunity doctrine).)

12 Rather, the issue is resolved by federal case law recognizing tribal immunity from
13 suits arising from particular tribal activities whenever Congress has not expressly abrogated the
14 immunity or the tribe has not expressly waived its immunity from suit with respect to those
15 activities. (*Kiowa*, 523 U.S. at p. 754, 758-759; *Potawatomi*, 498 U.S. at pp. 510-511.) As
16 previously noted, the United States Supreme Court has recently declined in *Kiowa* and
17 *Potawatomi* to revisit its prior decisions and narrow its comprehensive recognition of tribal
18 immunity from suit even where the suit at issue seeks to enforce state laws that the States are
19 federally authorized to impose upon tribes. (*Ibid.*) Instead of engaging in a particularized
20 balancing of the state, federal and tribal interests involved pursuant to a preemption analysis, the
21 court has deferred to Congress to weigh the competing policy considerations and determine in its
22 legislative process the extent to which the immunity should be sustained or abrogated. (*Ibid.*)
23 Congress, in turn, has abrogated tribal immunity from suit in some contexts and preserved it in a
24 variety of other contexts. (*Ibid.* See Indian Tribal Economic Development and Contracts
25 Encouragement Act of 2000, Pub. L. No. 106-179 (2000), and Tribal Torts Claims and Risk
26 Management Act of 2000, Pub. L. No. 105-277 (2000).)

27 Contrary to the FPPC's contention, congressional silence regarding the immunity of
28 Indian tribes from suits to enforce state law requirements for electoral campaign contributions

1 cannot be construed as congressional acknowledgement of the States' right to bring such suits
2 against the tribes in the exercise of the States' powers under the Tenth Amendment and the
3 Guaranty Clause of the United States Constitution. (See U.S. Const., art. IV, § 4; 10th Amend.)
4 True, at the core of the States' reserved powers under the Tenth Amendment and their right to a
5 republican or representative form of government under the Guaranty Clause is the power to
6 control state electoral processes. (See *Gregory v. Ashcroft* (1991) 501 U.S. 452, 461-462
7 (*Gregory*)). Also true, state laws requiring the reporting of state electoral campaign
8 contributions play an important role in the State's protection of its electoral processes against
9 corruption. (*Buckley v. Valeo* (1976) 424 U.S. 1, 66-68 (*Buckley*)). Nonetheless, Congress does
10 not impermissibly intrude upon the States' reserved powers under the Tenth Amendment and
11 Guaranty Clause when, by silence, it permits the doctrine of common law tribal immunity from
12 suit to bar suits by the States to enforce against tribes state reporting requirements for electoral
13 campaign contributions.

14 Congress has plenary power to control and define the sovereign activities and
15 interests of Indian tribes under article 1, section 8, clause 3, of the United States Constitution.
16 (See *Morton v. Mancari* (1974) 417 U.S. 535, 551-552.) This power was delegated to Congress
17 and relinquished by the States at the Constitutional Convention of 1787. (See *Worcester*, 31
18 U.S. at pp. 558-559.) As a result, the States have jurisdiction over tribal activities only as
19 permitted by federal law even when the tribal activities affect state sovereign powers, rights and
20 interests. (See, e.g., *Cabazon*, 480 U.S. at p. (State's interest in preventing infiltration of
21 high-stakes tribal games by organized crime); *Three Affiliated Tribes*, 476 U.S. at p. 888 (State's
22 interest in requiring that all its citizens bear equally burdens and benefits of access to courts).)
23 Congress, accordingly, may exercise its plenary power over Indian affairs to approve, either by
24 express enactment or by silence,⁵ common law tribal immunity from suits by the States to
25 enforce their campaign contribution regulations against Indian tribes even though the immunity

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27 ⁵ The applicability of the Tenth Amendment to congressional silence or inaction is questionable. Tenth
28 Amendment analysis typically involves a congressional enactment requiring the States to enforce a federal statutory
scheme (see e.g., *Printz v. United States* (1997) 521 U.S. 898) or to comply with federal regulations. (See, e.g., *New
York v. United States* (1992) 505 U.S. 144.)

1 may hamper the States' exercise of its reserved powers under the Tenth Amendment. As Justice
2 O'Connor pointed out in *Gregory*, the Supremacy Clause of the United States Constitution (art.
3 VI, cl. 2) permits Congress to legislate even in areas traditionally regulated by the States as long
4 as it is acting within the powers granted it under the Constitution.⁶ (501 U.S. at p. 460.)

5 Contrary to the further contention of the FPPC and amicus curiae California
6 Common Cause, the Tachi Tribe has not waived its immunity from this action by participating in
7 state elections through its voluntary contributions to the campaigns of political candidates and
8 ballot initiatives. Under governing case law, a tribe's waiver of its immunity from suit cannot be
9 implied on the basis of tribal conduct; a waiver is effective only when expressed unequivocally
10 by the tribe. (*Florida v. Seminole Tribe of Florida* (1999) 181 F.3d 1237, 1243, citing *Santa*
11 *Clara*, 437 U.S. at p. 58. See also *Potawatomi*, 498 U.S. at pp. 509-510, following *USF&G*, 309
12 U.S. at pp. 511-512 (initiation of suit by tribe did not waive tribe's immunity from
13 counterclaim); *Puyallup*, 433 U.S. at p. 173 (tribe's appearance in lawsuit on behalf of its
14 individual members did not effect waiver of immunity for tribe itself). And see *C & L Enter.,*
15 *Inc. v. Citizen Band Potawatomi Indian Tribe*, *supra*, 532 U.S. at p. 1597 (arbitration clause in
16 contract between tribe and building contractor, providing for judicial entry of arbitration award,
17 waived tribe's immunity from suit on contract.) Thus, by voluntarily making state electoral
18 campaign contributions, the Tachi Tribe has not subjected itself to suit by the State to enforce the
19 PRA reporting requirements for such contributions. Nor is there evidence of any expression by
20 the Tribe clearly submitting itself to the jurisdiction of the courts for enforcement of the PRA

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22
23 ⁶ Congressional actions defining the scope of tribal immunity from suit appear to fall squarely within the
24 plenary authority of Congress over Indian affairs under the Indian Commerce Clause, a power encompassing
25 regulation of the intercourse and relations between the federal government, the tribes and the states. (See *Morton v.*
26 *Mancari*, *supra*, 417 U.S. at pp. 551-552.) *Seminole*, 517 U.S. 44, is not to the contrary. There, the court
27 invalidated a provision of the federal Indian Gaming Regulatory Act (IGRA), enacted by Congress pursuant to its
28 power under the Indian Commerce clause, that authorized suits by Indian tribes against States to enforce the States' good faith negotiation of gaming compacts with the tribes under IGRA. The court held that Congress lacked power under the Indian Commerce Clause to abrogate the States' immunity from suit under the Eleventh Amendment of the United States Constitution by expanding the jurisdiction of federal courts under article III of the United States Constitution. (*Id.*, at pp. 72-73.) In contrast, congressional enactments defining the scope of tribal immunity from suit do not touch upon the States' Eleventh Amendment immunity from suit or the Article III jurisdiction of the federal courts.

1 requirements. In these circumstances, the Tribe cannot be found to have waived its immunity
2 from this action.

3 Accordingly, the court must conclude pursuant to the decisions of the United States
4 Supreme Court that the Tachi Tribe is immune from the instant action brought by the FPPC. In
5 reaching this conclusion, the court is not unmindful of the fundamental importance of the State's
6 sovereign interest in enforcing the PRA reporting requirements to secure full disclosure of large
7 electoral campaign contributions and preserve the integrity of its electoral processes. (See
8 *Buckley*, 424 U.S. at pp. 66-68.) The court is also not unmindful that judicial enforcement of the
9 PRA reporting requirements may be the most direct and effective means of enforcement for the
10 State. Under federal law, however, this most effective means of enforcement must bow to
11 alternative means that take into account the historical sovereign immunity of Indian tribes as well
12 as the State's sovereign powers and interests. (*Kiowa*, 523 U.S. at p. 755, citing *Potawatomi*,
13 498 U.S. at p. 514.) The conflict between tribal and state sovereigns must be resolved by the
14 federal governmental mechanisms and laws that have defined the sovereignty of Indian tribes and
15 controlled their relationships with the States since the early days of the United States. (See *Three*
16 *Affiliated Tribes*, 476 U.S. at pp. 890-891. And see *Worcester*, 31 U.S. at p. 557-559.)

17 These federal governmental mechanisms and laws, including the doctrine of tribal
18 immunity from suit as applied in this action, may be perceived as unjustifiable impediments to
19 the State's achievement of its sovereign interests in the integrity of its electoral processes and the
20 nondiscriminatory application of the PRA to all major contributors to state electoral campaigns,
21 but they are the mechanisms and laws designed and deemed necessary to address the anomalous
22 and complex position of historically sovereign tribes living within the States' borders. (See
23 *McClanahan*, 411 U.S. at 172-173, quoting *United States v. Kagama* (1886) 118 U.S. 164, 381-
24 382.) Any perceived inequity resulting from the application of tribal immunity to bar this action
25 must be accepted -- much as the perceived inequity that results from the application of the State's
26 Eleventh Amendment sovereign immunity to bar actions to enforce federal rights against the
27 State (see, e.g., *Alden v. Maine* (1999) 527 U.S. 706; *Seminole*, 517 U.S. 44) must be
28 accepted -- as necessary to protect and reconcile competing sovereign interests within the United

1 States. (Compare *Three Affiliated Tribes*, 476 U.S. at p. 893 (“The perceived inequity of
2 permitting the Tribe to recover from a non-Indian for civil wrongs in instances where a
3 non-Indian allegedly may not recover against the Tribe simply must be accepted in view of the
4 overriding federal and tribal interests. . . , much in the same way that the perceived inequity of
5 permitting the United States or North Dakota to sue in cases where they could not be sued as
6 defendants because of their sovereign immunity must also be accepted”))

7 Among the means compatible with existing federal law on tribal sovereignty and
8 available to the State to enforce PRA reporting requirements against the Tachi Tribe, the most
9 notable and promising is the negotiation of a government-to-government agreement. Not unlike
10 gaming compacts between the State and Indian tribes, such an agreement would provide for
11 reporting by the Tribe of its electoral campaign contributions in a manner consistent with both
12 the PRA and the Tribe’s sovereign status and would expressly waive the Tribe’s immunity from
13 suit to enforce the agreement. The Tribe, perhaps recognizing that such a negotiated agreement
14 would benefit its sovereign interests, has indicated its willingness to discuss it with the FPPC.
15 (See Declaration of Mike Sisco in Support of Motion of Specially Appearing Santa Rosa
16 Rancheria’s Motion to Quash Service of Summons, para. 4.)

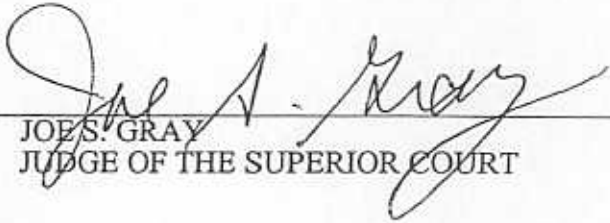
17 Additionally, the State could pursue, singly or in conjunction with other States,
18 congressional enactments that would define the scope of state authority to impose laws like the
19 PRA upon Indian tribes and to enforce such laws against the tribes in civil actions. (See
20 *Potawatomi*, 498 U.S. at p. 514 (suggesting remedy of congressional legislation).) Congress has
21 enacted similar legislation over the years with respect to a variety of areas of overlapping and
22 conflicting state and tribal jurisdictions and interests. (See, e.g., Indian Gaming Regulatory Act,
23 25 U.S.C. § 2701 et seq.)

24 In the interim, the State is not without a means of tracking and publicly disclosing
25 the electoral campaign contributions of the Tachi and other Indian tribes. Under the PRA,
26 recipients as well as large donors of electoral campaign contributions are required to report the
27 source and amount of all such contributions. (See Gov. Code § 84200 et seq.) Therefore, the
28 PRA reports filed by recipients of contributions from the Tachi Tribe or other Indian tribes

1 routinely identify the amounts that the recipients have received from the tribes. Searches of
2 recipient reports for this information about tribal contributions may be more cumbersome and
3 time-consuming than searching reports of contributions by the tribes themselves,⁷ and the lack of
4 dual reporting by recipients and donors might lead some recipients to violate PRA requirements
5 by omitting tribal contributions from their reports, but overall, the recipient reports can be
6 expected to provide the information about tribal contributions that is needed to achieve the
7 purposes of the PRA in informing the electorate about financial influences on state politics and
8 preserving the integrity of state elections. The recipient reports provide, if not the most efficient
9 remedy for the Tachi Tribe's noncompliance with PRA reporting requirements, a viable
10 alternative to judicial enforcement of the reporting requirements against the Tribe.

11 The motion to quash is granted. Counsel for defendants is directed to prepare, serve
12 on all parties, and submit to this court a proposed order in accordance with rule 391 of the
13 California Rules of Court.

14 Dated:


15 _____
16 JOE S. GRAY
17 JUDGE OF THE SUPERIOR COURT
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26 ⁷ Electronic filing of campaign finance disclosure reports by state candidates and campaign committees,
27 projected by the Secretary of State to be fully available in 2003, should make searches of recipient reports for donor
28 identities less cumbersome and time-consuming. (See Secretary of State's Office, Report to the Legislature: Online
Campaign Disclosure (January 2003), available on the website of the Secretary of State at
http://www.ss.ca.gov/prd/Online_Disclosure_Act_report_2003.pdf.)

Case Number: 02AS04544

Department: 54

Case Title: FAIR POLITICAL PRACTICES COMMISSION VS. SANTA ROSA
INDIAN COMMUNITY OF THE SANTA ROSA RANCHERIA, ET AL.

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(3))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing RULING ON SUBMITTED MATTER by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

JOHN C. ULIN
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SACRAMENTO, CA 95814

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: APRIL 25, 2003

Superior Court of California,
County of Sacramento

By: R. ROUSE,
Deputy Clerk